

HB8TSEA1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 467 ALC

5 NORMAN SEABROOK AND MURRAY HUBERFELD,

6 Defendants.

7 -----x

8  
9  
10 November 8, 2017  
11 9:00 a.m.

12  
13 Before:

14 HON. ANDREW L. CARTER, JR.,

15 District Judge  
16 and a jury

17  
18 APPEARANCES

19 JOON H. KIM,  
20 United States Attorney for the  
21 Southern District of New York  
22 KAN MIN NAWADAY,  
23 MARTIN S. BELL,  
24 RUSSELL CAPONE,  
25 Assistant United States Attorneys

HB8TSEA1

## APPEARANCES (Continued)

BRACEWELL, LLP,  
Attorneys for defendant Seabrook  
BY: PAUL LEWIS SHECHTMAN, Esq.  
MARGARET EMMA LYNAUGH, Esq.  
Of counsel

MAZUREK LIPTON, LLP  
Attorneys for defendant Huberfeld  
BY: HENRY EDWARD MAZUREK, Esq.  
EVAN LOREN LIPTON, Esq.  
Of counsel

Also Present:  
BARD HUBBARD, Special Agent FBI  
YOLANDA BUSTILLO, Paralegal USAO  
AUGUSTA GRANQUIST, Paralegal

(In open court, jury not present)

THE COURT: Everyone here? Are all the parties here?

MR. MAZUREK: Mr. Huberfeld I think is stuck in an  
accident. He's not in an accident, but he's been delayed  
because of an accident in front of the West Side Highway.

THE COURT: Do you have an estimated time as to when  
he might arrive?

MR. MAZUREK: He said he's at Canal Street right now.

THE COURT: Okay. Thanks. So counsel, let's discuss

HB8TSEA1

1 some general housekeeping matters.

2 Counsel for Mr. Huberfeld, do you waive his appearance  
3 for this?

4 MR. MAZUREK: I do.

5 THE COURT: We'll charge the jury this morning. First  
6 of all, is there anything that counsel wishes to raise?

7 MR. BELL: No, your Honor.

8 MR. MAZUREK: No, your Honor.

9 MR. SCHECHTMAN: Nothing.

10 THE COURT: So there are a few typos and little things  
11 like that in the jury instructions that we have, we didn't  
12 receive anything else from counsel, but I will make these edits  
13 on the fly. There may be other edits that need to be made  
14 while making them on the fly, so we'll wait until we made all  
15 the edits before we actually print out the final copy for the  
16 jurors. Let me let counsel know of the things that we have  
17 seen so far that we need this change, and they're pretty minor.

18 On page 10 of the instructions, the second paragraph,  
19 reasonable doubt instruction, the fourth sentence in the second  
20 paragraph, it is doubt that a reasonable person has. I think  
21 that should be -- the article "a" should be included there  
22 because the next sentence also says it is a doubt, and should  
23 be a reasonable doubt, so a doubt.

24 Any objection, counsel for either side?

25 MR. MAZUREK: No.

HB8TSEA1

1 MR. NAWADAY: No, your Honor.

2 THE COURT: Then on page 11, the first full paragraph,  
3 the second -- I guess the third sentence says commit honest  
4 services fraud against the Corrections Officers Benevolent  
5 Association, there's an extra S on "Correction," I'll take that  
6 off. Counsel have any objection to that?

7 MR. BELL: No, your Honor.

8 MR. MAZUREK: No.

9 MS. LYNAUGH: None.

10 THE COURT: Then other really, really minor things.  
11 On page 12 we need to conform the dashes, there's a single dash  
12 then a double dash on the bottom of page 12, the last  
13 paragraph, we'll make that small correction.

14 Something elsewhere there's a pronoun missing, page  
15 15, the penultimate paragraph, the last full paragraph the one  
16 that starts, "The commission of a kickback," the last sentence  
17 says "Laws criminalizng kickback payments are designed to  
18 prevent quid pro quo corruption where the union official has a  
19 duty of loyalty to his membership exchanges his," it seems to  
20 me there should be a "who" after "official," so where the union  
21 official who had a duty of loyalty to his membership exchanges  
22 his official action for something of value, unless counsel has  
23 another suggestion.

24 Counsel, any thoughts on that?

25 MR. BELL: That seems right, your Honor.

HB8TSEA1

1 MR. MAZUREK: That's fine.

2 MS. LYNAUGH: We agree.

3 THE COURT: I didn't see anything else yet. Perhaps  
4 while we're waiting it helps for counsel to go ahead and go  
5 through, read through the rest of the instructions sort of with  
6 a fine tooth comb and see if there's any other typos or things  
7 like that so we could fix those and make those adjustments.

8 Anything else we need to discuss right now while we're  
9 waiting for the jurors, counsel for Mr. Huberfeld?

10 MR. MAZUREK: Your Honor, we saw in the draft verdict  
11 form and it looks fine to us.

12 THE COURT: Okay. Counsel for Mr. Seabrook?

13 MS. LYNAUGH: Same here.

14 THE COURT: Counsel for the government?

15 MR. BELL: Same as well.

16 THE COURT: We printed out a copy, since there are  
17 several drafts, make sure that's the copy that's good with  
18 everyone, that's right form of verdict form, and we will mark  
19 that as Court Exhibit 2. Court Exhibit 1 will be the jury  
20 instructions once we have those finalized, but let's have  
21 counsel inspect that and make sure we're all good with that.

22 The other thing is when I read the jury instructions,  
23 that's not going to be particularly riveting for the jury.  
24 It's usually not particularly enjoyable listening to anyone  
25 read unless it's Judi Dench or Morgan Freeman and I am neither

HB8TSEA1

1 of those people, but counsel should be aware, to try to keep  
2 the jurors perhaps from snoring during the reading I will  
3 attempt to change the speed at which I speak and I may change  
4 the pitch of my voice. So, counsel, don't be alarmed, nothing  
5 has happened to me.

6 MR. MAZUREK: Judge, I want to inform the Court that  
7 Mr. Lipton is at another court appearance. If he arrives  
8 during the reading of the instructions do you want him to wait  
9 outside until you're finishing or could he come in?

10 THE COURT: He could come in as long as he doesn't  
11 make a grand entrance, that's fine.

12 MR. MAZUREK: I'll let him know that.

13 THE COURT: And again, the plan is what I will do is  
14 read the instructions to the jury, then perhaps we'll send the  
15 jury into the jury room and they'll probably need a break, and  
16 I'll confer with counsel to see if there's anything that I  
17 misread or omitted, if so, bring the jury back and correct  
18 that.

19 If not, it will be my intention to perhaps ask my  
20 deputy then to bring the alternate jurors out ask them to bring  
21 their belongings with them and then tell them that they are  
22 free to leave the courtroom but they're not excused, and I will  
23 still give them the same instructions that all the other jurors  
24 have had and tell them that we may need to reach them.

25 Any objection to that?

HB8TSEA1

Charge

1 MR. SCHECHTMAN: No, Judge.

2 MR. NAWADAY: No.

3 THE COURT: I guess before we do that we'll have to  
4 have the marshal sworn, but we do that, bring the alternates  
5 out, let them go from the jury and the jurors will start  
6 deliberating.

7 My plan is to give counsel an opportunity to get some  
8 lunch if you want to that. So we're going to see if we could  
9 get lunch delivered to the jury at like 12:30, 12:45, only  
10 because the jury may decide to stop at 2:30 with the  
11 understanding if the jury has any notes during that 12:30 to  
12 1:30 period of time they will have to wait until we get back.

13 Counsel fine with that? I didn't want to do a 1:00 to  
14 2:00 because if the jury wants to leave as 2:30 and they have a  
15 bunch of notes that come over the lunch break, I don't want to  
16 delay.

17 Any objection to that?

18 MR. BELL: No, your Honor.

19 MR. MAZUREK: No.

20 MS. LYNAUGH: None.

21 THE COURT: Okay. See you soon. Counsel go through  
22 the rest of the instructions and see if there's anything else  
23 that needs to be corrected.

24 (Recess taken)

25 THE COURT: The jury is all here. My deputy will

HB8TSEA1

Charge

1 bring the jury in.

2 And counsel, so you know, I don't plan to read the  
3 captions, I will just read the instructions. I'll read the  
4 captions when I get to the elements of the offense.

5 (Jury present)

6 THE COURT: Good morning, welcome back. I will now  
7 give you the instructions on the law. Now you don't need it  
8 take notes for this because -- again, you don't need to take  
9 notes for this because we're going to give a copy of these jury  
10 instructions to you when you go to deliberate. But it's  
11 important that you listen.

12 It is my duty at this point to instruct you on the  
13 law. It is your duty to accept these instructions and apply  
14 them to the facts as you determine them. Regardless of any  
15 opinion you may have as to what the law may be or should be, it  
16 would violate your duty to base a verdict on any other view of  
17 the law than the one I give you. If an attorney has stated a  
18 legal principle differently than I state it to you, it is my  
19 instructions that you must follow.

20 You should not single out any instruction but should  
21 consider my instructions as a whole when you retire to  
22 deliberate the verdict. You may take a copy of these  
23 instructions with you into the jury room.

24 Your role is to decide the facts of the case. You are  
25 the sole and exclusive judges of the facts. You must determine



HB8TSEA1

Charge

1 the facts based solely on the evidence received in this trial.  
2 In determining the facts, you must rely upon your own  
3 recollection of the evidence. What the lawyers have said, for  
4 instance, in opening statements, in closing arguments, in  
5 objections or in questions, is not evidence. You should bear  
6 in mind particularly that a question put to a witness is not  
7 evidence, it is only the answer that is evidence.

8 The lawyers' arguments are intended to convince you to  
9 draw certain conclusions from the evidence or lack of evidence.  
10 Those arguments important. You should weigh and evaluate them  
11 carefully. But you must not confuse them with the evidence.  
12 As to what the evidence was, it is your recollection that  
13 governs, not the statements of the lawyers.

14 You should draw no inference or conclusion for or  
15 against any party by reason of the lawyers making objections or  
16 my ruling on those objections. The attorneys have a duty to  
17 make legal objections when they think that such objections are  
18 appropriate. You should not be swayed against the government  
19 or the defendants simply because counsel for either side has  
20 chosen to make an objection. Similarly, statements made by  
21 counsel when arguing the admissibility of evidence are not to  
22 be considered as evidence.

23 I remind you also that nothing that I have said during  
24 the trial or during these instructions is evidence. Similarly,  
25 the rulings I have made during the trial are not any indication

HB8TSEA1

Charge

1 of my views of what your decision should be. My rulings were  
2 based solely on issues of law. Do not concern yourselves with  
3 what was said at sidebar conferences or during my discussions  
4 with counsel. Those discussions related to rulings of law and  
5 not to matters of fact.

6 The law recognizes two types of evidence, direct and  
7 circumstantial. You may rely on either type of evidence.  
8 Direct evidence is evidence that, if believed, directly shows a  
9 fact. For instance, one kind of direct evidence is a witness's  
10 testimony about something she knows by virtue of her own  
11 senses, something the witness has seen, felt, touched or heard.  
12 Direct evidence may also be in the form of an exhibit.

13 Circumstantial evidence is a chain of circumstances  
14 that indirectly proves a fact. Stated differently,  
15 circumstantial evidence is a fact or series of facts that, if  
16 believed, leads to a conclusion that another fact exists. For  
17 example, if a witness testified that she saw it raining outside  
18 and you believed her, that would be direct evidence it was  
19 raining. If someone walked into the courtroom wearing a  
20 raincoat covered with drops of water and carrying a wet  
21 umbrella, that would be circumstantial evidence from which you  
22 could conclude it was raining.

23 Circumstantial evidence is as valuable as direct  
24 evidence. The law makes no distinction between them. There  
25 are times when different inferences may be drawn from the

HB8TSEA1

Charge

1 facts, whether they are proven by direct or circumstantial  
2 evidence. The government asks you to draw one set of  
3 inferences. The defendants ask you to draw another. It is for  
4 you, and you alone, to decide what inferences you will draw.

5 Much of the evidence you heard was presented to you in  
6 the form of testimony from witnesses. First, let me remind you  
7 that it is for you and you alone to decide the credibility of  
8 witnesses who appeared here and the weight their evidence  
9 deserves. Your determination of the credibility of a witness  
10 largely depends upon the impression the witness made upon you  
11 as to whether or not he or she was giving an accurate version  
12 of what occurred.

13 The degree of credit given to a witness should be  
14 determined by his or her demeanor, relationship to the  
15 controversy and the parties, bias or impartiality, the  
16 reasonableness of the witness's statement, the strength or  
17 weakness of the witness's recollection viewed in light of all  
18 other testimony, and the attendant circumstances in the case.  
19 In passing upon the credibility of a witness, you may also take  
20 into account any inconsistencies or contradictions as to  
21 material matters in his or her testimony.

22 You may consider whether a witness had or did not have  
23 a motive to lie. If a witness had a motive to lie, you may  
24 consider whether and to what extent, if any, that motive  
25 affected the truthfulness of that witness's testimony. If a

HB8TSEA1

Charge

1 witness did not have a motive to lie, you may consider that as  
2 well in evaluating the witness's truthfulness.

3           You have heard evidence during the trial that the  
4 witnesses have discussed the facts of the case and their  
5 testimony with the lawyers before the witnesses appeared in  
6 court. There is nothing unusual or improper about a witness  
7 meeting with lawyers before testifying so that the witness  
8 could be aware of the subjects she will be questioned about.  
9 The weight you give to the fact or the nature of the witness's  
10 preparation for her testimony and what inferences you draw from  
11 such preparation are matters completely within your discretion.

12           If you find that any witness has willfully testified  
13 falsely as to any material fact, you have the right to reject  
14 the testimony of that witness in its entirety. On the other  
15 hand, even if you find that a witness has testified falsely  
16 about one matter, you may reject as false that portion of his  
17 or her testimony and accept as true any other portion of his or  
18 her testimony. A witness may be inaccurate, contradictory, or  
19 even untruthful in some aspects, and yet be truthful and  
20 entirely credible in other aspects of his or her testimony.

21           The ultimate question for you to decide in passing  
22 upon credibility is: Did the witness tell the truth before  
23 you? It is for you to say whether his or her testimony at  
24 trial is true in whole or in part in light of the witness's  
25 demeanor, explanations, and all of the evidence in the case.

HB8TSEA1

Charge

1           In evaluating the credibility of the witnesses, you  
2       should take into account any evidence that the witness who  
3       testified may benefit in some way from the outcome of this  
4       case. Such an interest in the outcome creates a motive to  
5       testify falsely and may sway the witness to testify in a way  
6       that advances his or her own interest. Therefore, if you find  
7       that any witnesses whose testimony you are considering may have  
8       an interest in the outcome of this trial, then you should bear  
9       that factor in mind when evaluating his or her credibility and  
10      accept it with great care.

11           This is not to suggest that every witness who has an  
12      interest in the outcome of a case will testify falsely. It is  
13      for you to decide to what extent, if at all, the witness's  
14      interest has affected or colored his or her testimony.

15           You have heard evidence that at some earlier time  
16      witnesses have said or done something that counsel argues is  
17      inconsistent with their trial testimony. Evidence of a prior  
18      inconsistent statement was placed before you only for the  
19      purpose of helping you decide whether to believe the testimony  
20      of a witness who may have contradicted a prior statement he or  
21      she made. If you find that the witness made an earlier  
22      statement that conflicts with the witness's testimony, you may  
23      consider that fact when deciding how much of the witness's  
24      testimony, if any, to believe.

25           In making this determination, you may consider whether

HB8TSEA1

Charge

1 the witness purposely made a false statement or whether it was  
2 an innocent mistake; whether the inconsistency concerns an  
3 important fact or whether it had to do with a small detail;  
4 whether the witness had an explanation for the inconsistency,  
5 and whether that explanation appealed to your common sense.

6 It is exclusively your duty, based upon all the  
7 evidence and your own good judgment, to determine whether the  
8 prior statement was inconsistent, and if so, how much, if any,  
9 weight to give to the inconsistent statement in determining  
10 whether to believe all, or part, of the witness's testimony.

11 Some of you took notes periodically throughout this  
12 trial. I want to emphasize to you that notes are simply an aid  
13 to your memory. Notes that you may have made should not be  
14 given greater weight or influence than the recollections or  
15 impressions of other jurors with respect to the evidence  
16 presented or what conclusions, if any, should be drawn from the  
17 such evidence. All jurors' recollections are equal.

18 Some of the exhibits received in evidence at this  
19 trial were in the form of charts. Some of these charts were  
20 introduced as summaries. Summary charts are not themselves  
21 direct evidence. They are instead summaries or analyses of  
22 evidence that was received, either in the form of documents or  
23 testimony. The charts are intended to assist you in your  
24 deliberations. However, it is the underlying evidence and the  
25 weight that you attribute to it that gives value and

HB8TSEA1

Charge

1 significance to these charts. To the extent that the charts  
2 conform to what you determine the underlying evidence to be,  
3 you should accept them. To the extent that the charts differ  
4 from what you determine the underlying evidence to be, you may  
5 reject them.

6 The fact that the prosecution is brought in the name  
7 of the United States of America entitles the government to no  
8 greater consideration than that given to any other party. By  
9 the same token, the government is entitled to no less  
10 consideration.

11 The indictment is not evidence. It is an accusation,  
12 a statement of what the government intends to prove by offering  
13 evidence at trial. It gives the defendants notice of the  
14 charges against them and states the nature of the accusations.

15 Because the indictment is not evidence and does not  
16 prove guilt, you are to give it no weight. Nor are you to  
17 attempt to consider how the indictment was obtained. A  
18 defendant begins trial with a clean slate and without any  
19 evidence against him or her. What matters is the evidence that  
20 you heard and saw during the trial.

21 The defendants are formally charged in an indictment.  
22 The indictment consists of charges or accusations. It is not  
23 evidence. I will not read the entire indictment to you at this  
24 time. Rather, I will first summarize the offenses charged in  
25 the indictment. Then I will explain in detail the elements of

HB8TSEA1

Charge

1 the offenses.

2 Before I do so, however, I need to define the term  
3 reasonable doubt, for the government must prove each element of  
4 the crimes beyond a reasonable doubt. Since, in order to  
5 convict the defendant of a given charge, the government is  
6 required to prove that charge beyond a reasonable doubt, the  
7 question then is: What is a reasonable doubt? The words  
8 almost define themselves. It is a doubt based upon reason. It  
9 is a doubt that a reasonable person has after carefully  
10 weighing all of the evidence. It is a doubt that would cause a  
11 reasonable person to hesitate to act in a matter of importance  
12 in his or her personal life. Proof beyond a reasonable doubt  
13 must, therefore, be proof of a convincing character that a  
14 reasonable person would not hesitate to rely upon in making an  
15 important decision.

16 A reasonable doubt is not caprice or whim. It is not  
17 speculation or suspicion. It is not an excuse to avoid the  
18 performance of an unpleasant duty. The law does not require  
19 that the government prove guilt beyond all possible doubt;  
20 proof beyond a reasonable doubt is sufficient to convict.

21 If, after fair and impartial consideration of the  
22 evidence, you have a reasonable doubt as to the defendant's  
23 guilt with respect to a particular charge against him, you must  
24 find the defendant not guilty on that charge.

25 On the other hand, if, after fair and impartial



HB8TSEA1

Charge

1 consideration of all of the evidence, you are satisfied beyond  
2 a reasonable doubt of the defendant's guilt with respect to a  
3 particular charge against him, you should find the defendant  
4 guilty of that charge.

5 Having defined reasonable doubt, let me discuss the  
6 charges. The indictment contains two charges or counts.

7 Count One charges Norman Seabrook and Murray Huberfeld  
8 with participating in a conspiracy to commit honest services  
9 fraud against the Correction Officers Benevolent Association,  
10 or COBA, in connection with Seabrook's position as the  
11 president of COBA. In particular, Count One charges that  
12 Huberfeld agreed to pay kickbacks to Seabrook in exchange for  
13 Seabrook directing millions of dollars of COBA funds to a  
14 Manhattan hedge fund.

15 Under our criminal laws, conspiring or agreeing to  
16 commit a crime, as charged in Count One, is a separate crime  
17 from committing the crime, which is charged in Count Two.

18 Count Two charges that the Seabrook committed honest  
19 services fraud against COBA and Huberfeld aided and abetted the  
20 same. In particular, Count Two alleges that Huberfeld arranged  
21 the payment of a kickback to Seabrook in exchange for Seabrook  
22 directing millions of dollars of COBA funds to a Manhattan  
23 hedge fund.

24 Now there are two defendants on trial before you.  
25 Each has been charged with the same crimes. You must return a

HB8TSEA1

Charge

1 separate verdict of guilty or not guilty for each defendant.  
2 In reaching your verdict, bear in mind that guilt is personal  
3 and is individual. Your verdict must be based solely upon the  
4 evidence about each defendant. The case against each defendant  
5 stands or falls upon the proof or lack of proof against that  
6 defendant alone, and your verdict as to any defendant should  
7 not influence your decision as to any other defendant.

8 Count Two, honest services wire fraud.

9 As I have stated, defendants Norman Seabrook and  
10 Murray Huberfeld are charged with two counts in the indictment.  
11 Count One charges a conspiracy to violate the honest services  
12 wire fraud statute, and Count Two charges a violation of the  
13 honest services wire fraud statute.

14 To make my instructions more easily understood, I will  
15 start with Count Two first and then discuss Count One. As to  
16 Count Two, I will instruct you first as to Norman Seabrook and  
17 then as to Murray Huberfeld.

18 In order to sustain its burden of proof against  
19 Mr. Seabrook with respect to Count Two, the honest services  
20 wire fraud count, the government must prove four elements  
21 beyond a reasonable doubt.

22 First, that there was a scheme or artifice to defraud  
23 the New York City Correction Officers Benevolent Association  
24 and its members' intangible right to Norman Seabrook's honest  
25 services through bribery or kickbacks.

HB8TSEA1

Charge

1           Second, that Norman Seabrook knowingly and willfully  
2 participated in the scheme or artifice, with knowledge of its  
3 fraudulent nature and with specific intent to defraud.

4           Third, that the scheme or artifice to defraud involved  
5 a material misrepresentation or omission.

6           Fourth, that in the execution of that scheme,  
7 Mr. Seabrook used or caused the use by another of interstate or  
8 foreign wires, as alleged in the indictment.

9           First element, existence of scheme or artifice to  
10 defraud.

11           The first element of honest services wire fraud that  
12 the government must prove beyond a reasonable doubt is that  
13 there was a scheme or artifice to defraud COBA of its  
14 intangible right to the honest services of Norman Seabrook  
15 through a kickback. A union official owes a fiduciary duty,  
16 that is, a duty of honest and faithful services, to his union  
17 and its members. When a union official obtains an undisclosed  
18 kickback in exchange for actions taken in his capacity as a  
19 union official on behalf of the person or entity paying the  
20 bribe or kickback, he has breached his duty of honest and  
21 faithful service.

22           A "scheme or artifice" is a plan for the  
23 accomplishment of an object.

24           "Fraud" is a general term that embraces all the  
25 various means that human ingenuity can devise and that are

HB8TSEA1

Charge

1     resorted to by an individual to gain an advantage over another  
2     by false representations, suggestions or suppression of the  
3     truth, or deliberate disregard for the truth.

4             Thus, a "scheme to defraud" in this context is merely  
5     a plan to deprive COBA of its right to Norman Seabrook's honest  
6     services through the payment of an undisclosed kickback to  
7     Mr. Seabrook in exchange for his steering the union's funds.

8             A scheme to defraud need not be shown by direct  
9     evidence, but may be established by all of the circumstances  
10    and facts in the case.

11            A statement, representation, or document is false if  
12    it is untrue when made and was then known to be untrue by the  
13    person making it or causing it to be made. A statement,  
14    representation, or document is fraudulent if it was made  
15    falsely and with intent to deceive. A representation,  
16    statement, claim, or document may also be fraudulent if it  
17    contains half truths or if it conceals material facts in a  
18    manner which makes what is said or represented deliberately  
19    misleading or deceptive.

20            The deception need not be premised on spoken or  
21    written words alone. The arrangement of the words or the  
22    circumstances in which they are used may convey the false and  
23    deceptive appearance. In the context honest services fraud,  
24    the deceit may consist of the concealment of kickbacks that the  
25    union official has solicited or received, or the union

HB8TSEA1

Charge

1 official's implicit false pretense to his union that he has not  
2 solicited or obtained kickbacks in exchange for taking actions  
3 on behalf of the person or entity providing the bribes or  
4 kickbacks. If there is deception, the manner in which it is  
5 accomplished is immaterial.

6 It does not matter whether any of the individuals or  
7 entities involved might have discovered the fraud had they  
8 probed it further. If you find that a scheme or artifice  
9 existed, it is irrelevant whether you believe that any  
10 individual or entity involved was careless, gullible, or even  
11 negligent. Furthermore, it is not necessary that the  
12 government prove that the intended victim actually suffered any  
13 loss. It is sufficient for the government to prove that COBA  
14 did not receive the honest and faithful services of Seabrook.

15 To prove that Mr. Seabrook has committed the  
16 particular scheme to defraud here beyond a reasonable doubt,  
17 the government must show that he was involved in a kickback  
18 scheme. A kickback scheme involves a union official's steering  
19 business of his union to a third party in exchange for  
20 something of value in violation of his fiduciary duty to the  
21 union. That is, the government must show that Mr. Seabrook  
22 received a kickback in a quid pro quo. *Quid pro quo* is Latin,  
23 and it means "this for that" or "these for those." A kickback  
24 is anything of value which is provided to a union official in  
25 exchange for the promise or performance of official action.

HB8TSEA1

Charge

1 The term "official action" includes any decision or action on  
2 any question or matter which may at any time be pending before  
3 the union, or pursuant to the union bylaws may be brought  
4 before the union. A union official can perform an official  
5 action by exercising influence over a union decision when it is  
6 a settled practice as part of the official's position for him  
7 to do so. In addition, official action includes the exercise  
8 of both formal official influence, such as a union official's  
9 votes, and informal official influence, such as exerting  
10 pressure on other union officials. However, setting up a  
11 meeting or engaging in a discussion with another union  
12 official, without more, is not an official action.

13 As I have previously noted, a union official receives  
14 a bribe or a kickback when he demands, seeks, or receives  
15 something of value, directly or indirectly, from another person  
16 in exchange for taking official action on behalf of the person  
17 or entity paying the kickback. While outwardly appearing to be  
18 exercising independent judgment in his actions on behalf of the  
19 union, the union official instead has been paid privately for  
20 his actions. Thus, the union or employer is not receiving the  
21 union official's honest and faithful service to which it is  
22 entitled.

23 The union official need not have initiated the  
24 payments, but he must have known that the payment was made in  
25 exchange for influencing his actions based on his position.

HB8TSEA1

Charge

1           The improper benefit may consist of money and other  
2 financial benefits, whether given on a one-time basis or as a  
3 stream of payments to the defendant. You have heard testimony  
4 that Jona Rechnitz gave Norman Seabrook gifts. Standing alone,  
5 the fact that Mr. Seabrook may have received trips, shoes,  
6 cigars, or other such gifts from Mr. Rechnitz does not make  
7 Mr. Seabrook or Mr. Huberfeld guilty of either of the charges  
8 in this case.

9           It is not a defense for a defendant to claim that he  
10 would have lawfully performed the actions in question even  
11 without having accepted a thing of value. In other words, it  
12 is not a defense that the offer or promise of anything of value  
13 was made to a union official in exchange for actions that were  
14 lawful, desirable, or even beneficial to his union. The  
15 offense of honest services fraud is not concerned with the  
16 wisdom or results of the union official's decisions, but rather  
17 with the manner in which the official makes his or her  
18 decisions.

19           The commission of a kickback requires that the  
20 government prove that the thing of value was given and received  
21 with the deliberate purpose of influencing an official act of  
22 the person it was given to. A kickback may not be founded on a  
23 mere attempt to curry favor or build good will. Laws  
24 criminalizing kickback payments are designed to prevent quid  
25 pro quo corruption where the union official who has a duty of

HB8TSEA1

Charge

1 loyalty to his membership exchanges his official action for  
2 something of value.

3 If you find that Mr. Seabrook understood that the  
4 thing of value being provided was solely to cultivate good will  
5 or to curry favor with the person or entity who provided the  
6 thing of value and not in exchange for the promise or  
7 performance of any official action, then this element will not  
8 have been proven. On the other hand, if you find that the  
9 government has proven that Mr. Seabrook accepted the kickback  
10 or thing of value, at least in part, to take official action in  
11 return for the kickback, then this element will have been  
12 proven.

13 If you find beyond a reasonable doubt that  
14 Mr. Seabrook has violated the duty to provide honest services  
15 by soliciting or receiving kickback payments, as defined here,  
16 alone or with the help of others, then you may find this  
17 element satisfied.

18 Second element, participation in a scheme with intent  
19 to defraud.

20 The second element that the government must prove  
21 beyond a reasonable doubt is that Mr. Seabrook knowingly and  
22 willfully participated in a scheme to defraud with knowledge of  
23 its fraudulent nature and with specific intent to defraud.

24 "Knowingly" means to act voluntarily and deliberately  
25 rather than mistakenly or inadvertently.



HB8TSEA1

Charge

1           "Willfully" means to act knowingly and purposely, with  
2           an intent to do something the law forbids, that is to say with  
3           bad purpose either to disobey or disregard the law.

4           To "participate" in a scheme to defraud means to  
5           associate oneself with it with a view and an intent toward  
6           making it succeed.

7           "Intend to defraud" means to act knowingly with a  
8           specific intent to deceive for the purpose of causing some  
9           financial or property loss to another or depriving another of  
10          the intangible right of honest services.

11          The question of whether a person acted knowingly,  
12          willfully, and with intent to defraud is a question of fact for  
13          you to determine like any other fact question. This question  
14          involves one's state of mind. Direct proof of knowledge and  
15          fraudulent intent is almost never available. It would be a  
16          rare case where it could be shown that a person wrote or stated  
17          that as of a given time in the past he committed an act with  
18          fraudulent intent. Such direct proof is not required.

19          In our everyday affairs we are continuously called  
20          upon to decide from the actions of others what they intended  
21          and what their state of mind is. Experience has taught us that  
22          frequently actions speak louder and more clearly than spoken or  
23          written words. The ultimate facts of knowledge and criminal  
24          intent, though subjective, may be established by circumstantial  
25          evidence based upon a person's outward manifestations, words,

HB8TSEA1

Charge

1     conduct, acts, and all the surrounding circumstances disclosed  
2     by the evidence and the rational or logical inferences that may  
3     be drawn therefrom. Circumstantial evidence, if believed, is  
4     of no less value than direct evidence.

5             Because an essential element of the crime charged is  
6     intent to defraud, it follows that good faith on the part of a  
7     defendant is a complete defense to a charge of honest services  
8     wire fraud. However, a defendant has no burden to establish a  
9     defense of good faith. The burden is on the government to  
10    prove fraudulent intent and the consequent lack of good faith  
11    beyond a reasonable doubt. In this regard, it is not necessary  
12    for the government to prove that the defendant was motivated  
13    solely by improper considerations. A defendant may be found to  
14    have an intent to defraud even if he also has other intents.  
15    The government will have satisfied its burden of proof on this  
16    element if you find that the defendant has an intent to  
17    defraud, even if he also had other proper or neutral intents  
18    for his actions.

19            Proof of motive is not a necessary element of the  
20    crimes with which the defendants are charged. Proof of motive  
21    does not establish guilt, nor does the lack of proof of motive  
22    establish that a defendant is not guilty. The presence or  
23    absence a motive is, however, a circumstance which you may  
24    consider as bearing on a defendant's intent.

25            To conclude on this element, in order to sustain the

HB8TSEA1

Charge

1 charge against Mr. Seabrook, the government must establish  
2 beyond a reasonable doubt that defendant was a knowing  
3 participant in the scheme and acted with specific intent to  
4 defraud.

5 Third element, materiality.

6 The third element that the government must prove  
7 beyond a reasonable doubt is that the false pretenses,  
8 representations, promises or omissions described in relation to  
9 the first element were material in that they had the natural  
10 tendency to influence or were capable of influencing the COBA  
11 board to change its behavior. Put another way, a material fact  
12 is one which would reasonably be expected to be of concern to a  
13 reasonable and prudent person in relying upon the  
14 representation or statement in making a decision.

15 This means that if you find a particular statement of  
16 fact to have been false, you must determine whether that  
17 statement was one that a reasonable person might have  
18 considered important in making his or her decision. The same  
19 principle applies to fraudulent half-truths or omissions of  
20 material facts.

21 Fourth element, use of wires.

22 The fourth and final element that the government must  
23 prove beyond a reasonable doubt is the use of an interstate or  
24 international wire communication in furtherance of the scheme  
25 to defraud. The term "wire facilities" includes telephones,

HB8TSEA1

Charge

1     faxes, emails and wire transfers between banks. The wire  
2     communication must pass between two or more states as, for  
3     example, a telephone call between New York and any other state.

4             It is not necessary for a defendant to be directly or  
5     personally involved in the wire communication as long as the  
6     communication was reasonably foreseeable in the execution of  
7     the alleged scheme to defraud in which the defendant is accused  
8     of participating.

9             In this regard, it would be sufficient to establish  
10    this element of the crime if the evidence justifies a finding  
11    that the defendant caused the wires to be used by others; and  
12    this does not mean that a defendant himself must have  
13    specifically authorized others to use a wire facility. When  
14    one does an act with knowledge that the use of the wire will  
15    follow in the ordinary course of business or where such use of  
16    the wires can reasonably be foreseen, even though not actually  
17    intended, then he causes the wires to be used. Incidentally,  
18    this wire use requirement is satisfied even if the wire use was  
19    done by a person with no knowledge of the fraudulent scheme,  
20    including a victim of the alleged fraud.

21            The use of the wire need not itself be fraudulent.  
22    Stated another way, the material wired need not contain any  
23    fraudulent representation or even any request for money. It is  
24    sufficient if the wires were used to further or assist in  
25    carrying out the scheme to defraud.

HB8TSEA1

Charge

1           Finally, if you find that the wire communication was  
2 reasonably foreseeable and that the interstate wire use charged  
3 in the indictment took place, then this element is satisfied  
4 even if it was not foreseeable that the wire communication  
5 would cross state or national lines. However, if you find that  
6 wire communications were used in furtherance of the scheme to  
7 defraud, you must be unanimous as to at least one of the  
8 particular interstate or foreign wire communications in  
9 furtherance of the scheme that occurred.

10           Aiding and abetting liability.

11           Aiding and abetting liability is its own theory of  
12 criminal liability. Under the aiding and abetting statute, it  
13 is not necessary for the government to show that a defendant  
14 himself physically committed the crime with which he is charged  
15 in order for the government to sustain its burden of proof. A  
16 person who aids and abets another to commit an offense is just  
17 as guilty of that offense as if he committed it himself.

18           Accordingly, you may find Murray Huberfeld guilty of  
19 honest services wire fraud if you find beyond a reasonable  
20 doubt that the government has proven that Mr. Seabrook actually  
21 committed the crime of honest services wire fraud and that  
22 Mr. Huberfeld aided and abetted in the commission of that  
23 crime.

24           The first requirement is that you find that another  
25 person has committed the crime at issue: Honest services wire

HB8TSEA1

Charge

1 fraud as charged in Count Two. If you find that Mr. Seabrook  
2 did not commit honest services wire fraud, then you need not  
3 deliberate further on Count Two as to Mr. Huberfeld. If  
4 Mr. Seabrook is not guilty of that crime, then Mr. Huberfeld  
5 cannot be guilty of aiding and abetting him to commit it.

6 To aid and abet another to commit a crime, a defendant  
7 must have willfully and knowingly associated himself in some  
8 way with the crime, and he must have participated in the crime  
9 by doing some act to help make the crime succeed.

10 Participation in a crime is willful if done  
11 voluntarily and intentionally and with the specific intent to  
12 do something which the law forbids or with the specific intent  
13 to fail to do something the law requires to be done, that is to  
14 say, with a bad purpose either to disobey or disregard the law.

15 The mere presence of Mr. Huberfeld where a crime is  
16 being committed, even coupled with knowledge by the defendant  
17 that a crime is being committed, is not sufficient to establish  
18 aiding and abetting. One who has no knowledge that a crime is  
19 being committed or is about to be committed, but inadvertently  
20 does something that aids in the commission of that crime, is  
21 not an aider and abettor. An aider and abettor must know that  
22 the crime is being committed and act in a way which is intended  
23 it to bring out the success of the criminal venture.

24 To determine if Mr. Huberfeld aided and abetted the  
25 commission of honest services wire fraud, ask yourself these

HB8TSEA1

Charge

1 questions:

2 Did Mr. Seabrook commit the crime at issue, the crime  
3 of honest services wire fraud?

4 If so, did Mr. Huberfeld participate in that crime  
5 charged as something that he wished to bring about?

6 Did Mr. Huberfeld knowingly and willfully associate  
7 himself with the honest services wire fraud?

8 Did he seek by his actions to make the criminal  
9 venture succeed?

10 If so, then he is an aider and abettor, and therefore  
11 he is guilty of the offense under consideration. If, on the  
12 other hand, your answer to any one of these questions is no,  
13 then he is not an aider and abettor and you must find him not  
14 guilty.

15 Count One, conspiracy to commit honest services wire  
16 fraud.

17 In addition to the substantive count of honest  
18 services wire fraud in Count Two, defendants Seabrook and  
19 Huberfeld are charged in Count One of the indictment with  
20 participating in a conspiracy to violate the honest services  
21 wire fraud statute, the crime I have just described.

22 A conspiracy is a kind of criminal partnership, an  
23 agreement of two or more persons to join together to accomplish  
24 some unlawful purpose. In order to satisfy its burden of proof  
25 with respect to the allegation of conspiracy, the government

HB8TSEA1

Charge

1 must establish each of the following elements beyond a  
2 reasonable doubt.

3 First, the existence of the conspiracy charged in the  
4 indictment.

5 Second, that at some point the defendant you are  
6 considering knowingly and willfully became a member of and  
7 joined in the conspiracy.

8 Element one, conspiracy, existence of an agreement.

9 The first element that the government must prove  
10 beyond a reasonable doubt is the existence of the conspiracy;  
11 that is, the government must prove beyond a reasonable doubt  
12 that two or more persons came to an agreement or understanding  
13 that would try to accomplish an unlawful purpose as charged in  
14 Count One.

15 The offense of conspiracy to commit an illegal act is  
16 separate and distinct from the actual commission of the illegal  
17 act that is the object of the conspiracy. To put it in  
18 context, conspiracy to commit the illegal act of honest  
19 services wire fraud is a separate and distinct crime from  
20 committing honest services wire fraud.

21 The defendant you are considering need not have  
22 committed the illegal act or acts that is the object of the  
23 conspiracy in order to be found guilty of the separate and  
24 independent crime of conspiracy. Putting it in practical  
25 terms, even if you acquit the defendant of Count Two, which is



HB8TSEA1

Charge

1 is honest services wire fraud, you must still consider whether  
2 that defendant conspired to commit that crime because it is a  
3 separate, independent crime.

4 In order for the government to satisfy this element,  
5 you need not find that the alleged members of the conspiracy  
6 met together and entered into any express or formal agreement.

7 (Continued on next page)

1           Similarly, you need not find that the alleged  
2           conspirator stated in words or writing what the scheme was, its  
3           object or purpose, or every precise detail of the scheme or the  
4           means by which its object or purpose was to be accomplished.

5           Indeed, it would be extraordinary if there were such a  
6           formal document or specific oral agreement. When people agree  
7           to enter into a criminal conspiracy, much is left to  
8           unexpressed understanding. What the government must prove is  
9           that there was a mutual understanding, either spoken or  
10          unspoken, between two or more people to cooperate with each  
11          other to accomplish an unlawful act.

12          You may, of course, find that the existence of an  
13          agreement to disobey or disregard the law has been established  
14          by direct proof. However, since conspiracy is, by its very  
15          nature, characterized by secrecy, you may also infer its  
16          existence from the circumstances of this case and the conduct  
17          of the parties involved.

18          It is not required that any particular number of  
19          people join together in order for the government to prove that  
20          a conspiracy existed. You need only find that two or more  
21          people entered into the unlawful agreement alleged in the  
22          indictment in order for you to find that a conspiracy existed.

23          In a very real sense, then, in the context of  
24          conspiracy cases, actions often speak louder than words. In  
25          this regard, you may, in determining whether an agreement

HB8JSEA2

Charge

1     existed here, consider the actions and statements of all of  
2     those you find to be participants as proof that a common design  
3     existed on the part of the persons charged to act together to  
4     accomplish an unlawful purpose.

5             Often the only evidence available is that of  
6     disconnected acts that, when taken together in connection with  
7     each other, show a conspiracy or agreement to secure a  
8     particular result as satisfactorily and conclusively as more  
9     direct proof.

10            Of course, proof concerning the accomplishment of the  
11    objects of the conspiracy may be the most persuasive evidence  
12    of the existence of the conspiracy itself, but it is not  
13    necessary that the conspiracy actually succeed in its purpose  
14    in order for you to conclude that the conspiracy existed.

15            In determining whether the conspiracy charged in Count  
16    1 actually existed, you may consider all the evidence of the  
17    acts, conduct and statements of the alleged conspirators and  
18    the reasonable inferences to be drawn from such evidence.

19            In regard to the timing of the alleged wire fraud  
20    conspiracy, Count 1 alleges that the conspiracy existed from  
21    about November 2013 through about 2015. It is not necessary  
22    that the government prove that the conspiracy started or ended  
23    on a particular precise date as long as it proves beyond a  
24    reasonable doubt that the conspiracy was formed and existed at  
25    some point during the period alleged in the indictment which

1 covers from November 2013 until 2015.

2 Finally, a conspiracy requires an object, some illegal  
3 thing that the members of the conspiracy agree they will try to  
4 accomplish. The conspiracy alleged in Count 1 has as its  
5 object honest services wire fraud. I have already explained  
6 the law regarding honest services wire fraud, so in deciding  
7 whether people agreed to violate the law of honest services  
8 wire fraud, you should consider my instructions on honest  
9 services wire fraud.

10 2. Conspiracy, members in a conspiracy.

11 If you conclude that the government has proven beyond  
12 a reasonable doubt that the conspiracy charged in Count 1 of  
13 the indictment existed, you must next determine the second  
14 question, and that is whether the defendant you are considering  
15 participated in the conspiracy with knowledge of its unlawful  
16 purpose and in furtherance of its unlawful object.

17 The government must prove beyond a reasonable doubt  
18 that the defendant, by his own actions and conduct,  
19 intentionally and knowingly entered into the conspiracy or  
20 agreement with a criminal intent; that is, with awareness of  
21 the generally unlawful nature of his acts. The defendant need  
22 not have known which specific law or rule his acts violated in  
23 order to be aware that his acts were unlawful.

24 As you can see, this element concerns a person's state  
25 of mind. Direct proof of state of mind is not always

1 available. Indeed, it would be a rare case where it could be  
2 shown that a person wrote or stated that as of a given time in  
3 the past, he committed an act with a certain state of mind.  
4 Such direct proof is not required.

5 For this element, the terms "intentionally" and  
6 "knowingly" mean that you must be satisfied beyond a reasonable  
7 doubt that in joining the conspiracy, if you find the defendant  
8 did join the conspiracy, the defendant knew what he was doing,  
9 that he took the actions in question deliberately and  
10 voluntarily.

11 An act is done intentionally and knowingly only if it  
12 is done deliberately and purposefully; that is, the act must  
13 have been the product of the defendant's conscious objective  
14 rather than the product of force, mistake, accident, mere  
15 negligence or some other innocent reason.

16 Now, knowledge is a matter of inference from the  
17 proven facts. Science has not yet devised a manner of looking  
18 into a person's mind and knowing what that person is thinking.  
19 However, you have before you the evidence of certain acts,  
20 conversations and statements alleged to involve the defendants  
21 and others. The ultimate facts of knowledge of criminal intent  
22 may be established by words and conduct and all the surrounding  
23 circumstances as well as the rational or logical inferences  
24 that may be drawn from the words and conduct. It is for you to  
25 determine whether the government has established beyond a

HB8JSEA2

Charge

1 reasonable doubt such knowledge and intent on the part of the  
2 defendant you are considering.

3 To have guilty knowledge, the defendant need not have  
4 known the full extent of the conspiracy charged in Count 1 or  
5 all of its activities or all of its participants. It is not  
6 even necessary that the defendant know every other member of  
7 the conspiracy. In fact, the defendant may know only one other  
8 member of the conspiracy and still be a co-conspirator. Nor is  
9 it necessary that a defendant receive any monetary benefit for  
10 participating in the conspiracy or have a financial stake in  
11 the outcome so long as he, in fact, participated in the  
12 conspiracy in the manner explained with knowledge of its object  
13 or objects and with the intent to further that object or  
14 objects.

15 The duration and extent of a defendant's participation  
16 in the conspiracy has no bearing on the issue of a defendant's  
17 guilt. The defendant need not have joined the conspiracy at  
18 the outset. The defendant may have joined it for any purpose  
19 at any time in its progress, and that defendant will still be  
20 held responsible for all that was done before he joined and all  
21 that was done during the conspiracy's existence while the  
22 defendant was a member.

23 Each member of the conspiracy may perform separate and  
24 distinct acts and may perform them at different times. Some  
25 conspirators played major roles, while others played minor

HB8JSEA2

Charge

1 roles in the scheme. An equal role is not what the law  
2 requires. In fact, even a single act may be sufficient to draw  
3 the defendant within the ambit of the conspiracy.

4         However, I want to caution you that the mere  
5 association by one person with another does not make that  
6 person a member of the conspiracy even when coupled with  
7 knowledge that a conspiracy is taking place. Similarly, mere  
8 presence at the scene of the crime, even coupled with knowledge  
9 that a crime is taking place, is not sufficient to support a  
10 conviction. In other words, knowledge without participation is  
11 not sufficient. A person may know or be friendly with a  
12 criminal without being a criminal himself.

13         Mere similarity of conduct or the fact that they may  
14 have assembled together and discussed common aims and interests  
15 does not necessarily establish membership in a conspiracy.  
16 What is necessary is that the defendant participated in the  
17 conspiracy with knowledge of its unlawful purpose and with an  
18 intent to aid in the accomplishment of its unlawful object.

19         In sum, the defendant, with an understanding of the  
20 unlawful character of the conspiracy, must have intentionally  
21 and knowingly engaged, advised or assisted in it for the  
22 purpose of furthering an illegal undertaking. The defendant  
23 thereby became a knowing and willing participant in the  
24 unlawful agreement; that is to say, a conspirator.

25         You will notice that the indictment refers to various

HB8JSEA2

Charge

1 dates. The law requires only a substantial similarity between  
2 the time alleged in the indictment and the time established by  
3 the evidence.

4 In addition to evaluating the elements of each  
5 offense, you must also consider the issue of venue as to each  
6 offense. The government must establish what is called venue,  
7 which means that some act in furtherance of that charge  
8 occurred in the Southern District of New York. The Southern  
9 District of New York includes Manhattan, the Bronx and  
10 Westchester, Rockland, Putnam, Dutchess, Orange and Sullivan  
11 Counties. Venue is proven if any act in furtherance of the  
12 crime you are considering occurred in the Southern District of  
13 New York regardless of whether it was the act of a charged  
14 defendant or anyone else.

15 Furthermore, on the issue of venue only, the  
16 government can meet its burden by a preponderance of the  
17 evidence rather than proof beyond a reasonable doubt. That  
18 means the government can meet its burden by showing that it was  
19 more likely than not that an act in furtherance of a given  
20 crime occurred in the Southern District of New York.

21 There are several people whose names you have heard  
22 during the course of the trial who did not appear here to  
23 testify. Both the government and the defendants have the same  
24 power to subpoena witnesses to testify on their behalf. If a  
25 potential witness could have been called by the government or



HB8JSEA2

Charge

1 by a defendant, and no one called the witness, then you may  
2 draw the conclusion that the testimony of the absent witness  
3 might have been unfavorable to the government or to the  
4 defendants, or to both.

5 On the other hand, you may choose to draw no inference  
6 at all from the failure of either side to call a witness. You  
7 should remember that there is no duty on either side to call a  
8 witness whose testimony would be merely cumulative of testimony  
9 already in evidence or who would merely provide additional  
10 testimony to facts already in evidence.

11 You should also remember that the law does not impose  
12 on a defendant in a criminal case the burden or duty of calling  
13 any witnesses or producing any evidence.

14 You have heard testimony of law enforcement officers  
15 and employees of the government. The fact that a witness is  
16 employed by the government does not mean that his or her  
17 testimony is necessarily deserving of more or less  
18 consideration or greater or lesser weight than that of any  
19 other witness.

20 It is legitimate for defense counsel to attack the  
21 credibility of a government witness like any other witness. It  
22 is your decision, after reviewing all of the evidence, whether  
23 to accept or reject the testimony of the witness and to give  
24 that testimony whatever weight you find it deserves.

25 You may not draw any inference, favorable or

HB8JSEA2

Charge

1 unfavorable, towards the government or the defendants from the  
2 fact that any person other than the defendants is not on trial  
3 here. You may not speculate as to the reasons why other  
4 persons are not on trial. Those matters are wholly outside  
5 your concern and have no bearing on your function as jurors.

6           You have also heard from a witness who testified that  
7 he was involved in criminal conduct and who subsequently pled  
8 guilty pursuant to what is called a cooperation agreement with  
9 the government. Your concern is whether a witness has given  
10 truthful testimony in court. Whether or not you approve of the  
11 use of cooperating witnesses to detect and investigate unlawful  
12 activities is not to enter into your deliberations in any way.  
13 The government sometimes must rely on the testimony of  
14 witnesses who have pleaded guilty and are cooperating. Indeed,  
15 the testimony of a single accomplice witness may be enough in  
16 itself for conviction if you believe the testimony establishes  
17 guilt beyond a reasonable doubt.

18           You should scrutinize and view with caution the  
19 testimony of any witness who has signed a cooperation  
20 agreement. In doing so, you should ask yourself whether the  
21 witness would benefit more from lying or by telling the truth.  
22 Was his testimony made up in any way because he believed or  
23 hoped he would receive favorable treatment by testifying  
24 falsely, or did he believe that his interests would be best  
25 served by testifying truthfully?

HB8JSEA2

Charge

1           If you believe that the witness was motivated by hopes  
2 of personal gain, was the motivation one that would cause him  
3 to lie or was it one that would cause him to tell the truth?  
4 Did the motivation color his testimony? In sum, you should  
5 look at all of the evidence in deciding what credence and what  
6 weight, if any, you will want to give to the cooperating  
7 witness.

8           You have heard testimony from a witness who pled  
9 guilty to the charges arising out of the same facts as this  
10 case. You are to draw no conclusions or inferences of any kind  
11 about the guilt of the defendants on trial here from the fact  
12 that a witness pled guilty to similar charges or unrelated  
13 charges. The decision of a witness to plead guilty is his own  
14 personal decision. It may not be used by you in any way as  
15 evidence against or unfavorable to the defendants on trial  
16 here.

17           Norman Seabrook and Murray Huberfeld did not testify  
18 in this case. Under our Constitution, a defendant has no  
19 obligation to testify or to present any evidence because it is  
20 the government's burden to prove guilt beyond a reasonable  
21 doubt. That burden remains with the government throughout the  
22 entire trial. A defendant is never required to prove that he  
23 is innocent. You may not attach any significance to the fact  
24 that a defendant did not testify. No adverse inference against  
25 him may be drawn by you because he did not take the witness

HB8JSEA2

Charge

1 stand. You may not consider this in any way in your  
2 deliberations.

3 You may consider the investigative techniques used by  
4 the government in deciding whether the government has met its  
5 burden of proof because you should look to all of the evidence  
6 or lack of evidence in deciding whether the defendants are  
7 guilty. However, you are also instructed that there is no  
8 legal requirement that the government use any specific  
9 investigative techniques to prove its case. Whether you  
10 approve or disapprove of various law enforcement techniques is  
11 not the question. You should determine whether or not, based  
12 on the evidence or lack of evidence, the defendant's guilt has  
13 been proven beyond a reasonable doubt.

14 The government has offered evidence in the form of  
15 recorded conversations, text messages and emails. Whether you  
16 approve or disapprove of the recording of these conversations  
17 may not enter your deliberations. I instruct you that the  
18 recordings were made in a lawful manner and that no one's  
19 rights were violated and that this evidence was properly  
20 admitted at this trial.

21 You must, therefore, regardless of any personal  
22 opinions, consider this evidence as you would any other  
23 evidence in this case in making your determination as to its  
24 meaning and significance, if any, in evaluating whether the  
25 government has proven beyond a reasonable doubt the guilt of

HB8JSEA2

Charge

1 the defendants.

2 Stipulations have been entered into relating to  
3 various facts in this case. A stipulation of fact is an  
4 agreement between the parties that a certain fact is true. You  
5 must regard such agreed facts as true.

6 You have also heard evidence in the form of  
7 stipulations of testimony. A stipulation of testimony is an  
8 agreement among the parties that, if called, a witness would  
9 have given certain testimony. You must accept as true the fact  
10 that the witness would have given the testimony. However, it  
11 is for you to determine the significance of that testimony.

12 We have among the exhibits received in evidence some  
13 documents that are redacted. "Redacted" means that part of the  
14 document or tape was taken out. You are to concern yourself  
15 only with the part of the item that has been admitted into  
16 evidence. You should not consider any possible reason why the  
17 other part of it has been deleted.

18 The defendants have pled not guilty to the charges.  
19 As a result, the burden is on the government to prove guilt  
20 beyond a reasonable doubt. This burden never shifts to a  
21 defendant and never imposes upon a defendant the burden or duty  
22 of testifying, calling any witnesses or locating or producing  
23 any evidence. The law presumes the defendants are innocent of  
24 each charge. This presumption of innocence alone is sufficient  
25 to acquit a defendant. This presumption was with each

HB8JSEA2

Charge

1 defendant when the trial began and remains with each defendant  
2 unless and until you are convinced that the government has  
3 proven a defendant's guilt beyond a reasonable doubt.

4 You should not consider the question of possible  
5 punishment of a defendant in determining if he is guilty of the  
6 crimes charged. Sentencing is exclusively the function of the  
7 court. It is not your concern and you should not give any  
8 consideration to that issue in deciding what your verdict will  
9 be. Therefore, I instruct you not to consider punishment or  
10 possible punishment at all in your deliberations in this case.

11 You are not to be swayed by sympathy or prejudice.  
12 You are to be guided solely by the evidence in this case. It  
13 is for you alone to decide whether the government has proven a  
14 defendant is guilty of the crimes charged solely on the basis  
15 of the evidence and subject to the law as I have given it to  
16 you.

17 If you have a reasonable doubt as to a defendant's  
18 guilt, you should not hesitate to acquit the defendant. On the  
19 other hand, if you should find that the government has met its  
20 burden of proving a defendant's guilt beyond a reasonable  
21 doubt, you should not hesitate because of sympathy or any other  
22 reason to render a verdict of guilty.

23 You're about to go into the jury room and begin your  
24 deliberations. If during those deliberations you want any of  
25 the exhibits or any specific portions of the testimony, the

HB8JSEA2

Charge

1 exhibits will be furnished to you and the testimony will be  
2 provided to you. Please remember that it is not always easy to  
3 locate testimony, so be as specific as you possibly can be in  
4 any request for testimony. A vague or overbroad request for  
5 testimony can lead to delays.

6 The foreperson will preside over your deliberations  
7 and will be your spokesperson in court. This is done simply  
8 for convenience. It gives him or her no greater authority and  
9 his or her oath has no greater weight than any other jurors.  
10 You are free to select any foreperson you like.

11 Any communication with the court should be made to me  
12 in writing, signed by your foreperson, and given to one of the  
13 marshals. I will respond to any questions or requests you have  
14 as promptly as possible, either in writing or by having you  
15 return to the courtroom so I can speak with you in person.

16 Your function now is to weigh the evidence in this  
17 case and to determine if the government has proven the crimes  
18 charged. You must base your verdict solely on the evidence or  
19 lack of evidence and these instructions as to the law. You are  
20 obligated to follow the law as I instruct you whether you agree  
21 or disagree with the particular law in question.

22 The verdict must represent the considered judgment of  
23 each juror. In order to return a verdict, it is necessary that  
24 each juror agrees to it. Your verdict must be unanimous. You  
25 should consult with one another and deliberate with a goal of

HB8JSEA2

## Charge

1 reaching an agreement. Each of you must decide the case for  
2 himself or herself, but do so only after an impartial  
3 discussion and consideration of all of the evidence with your  
4 fellow jurors. Do not hesitate to reexamine your own views and  
5 change your opinion if convinced it is erroneous, but do not  
6 surrender your honest conviction as to the weight or effect of  
7 evidence solely because of the opinion of your fellow jurors.

8 Remember you are judges of the facts. Your sole  
9 interest is to determine whether the government has proven the  
10 crimes charged beyond a reasonable doubt. If you are divided,  
11 do not report how the vote stands. When you reach a verdict,  
12 do not report what it is until you have been instructed to do  
13 so.

14 In conclusion, ladies and gentlemen, I am sure that if  
15 you listen to the views of your fellow jurors and if you apply  
16 your own common sense, you will reach a fair verdict here.  
17 Remember that your verdict must be rendered without fear,  
18 without favor, without prejudice or sympathy.

19 I have prepared a verdict form for you to use and for  
20 you to report the verdict you reach unanimously on it. I have  
21 given you the instructions on the law. What we are going to do  
22 now, I will send you to the jury room to take a break. I have  
23 to consult with counsel to make sure I haven't omitted  
24 anything. Do not start deliberating yet. Do not discuss this  
25 case with anyone. Don't discuss it amongst yourselves. Don't



HB8JSEA2

Charge

1 read anything about this case or listen to anything about this  
2 case. If you see anything, stop reading. If you hear  
3 anything, stop listening. Again don't let anyone discuss this  
4 with you. Don't discuss it amongst yourselves. Don't do any  
5 research regarding any of the people or issues involved in this  
6 case. I will see you in 10 minutes.

7 (Jury excused)

8 THE COURT: Please be seated.

9 So, counsel, I made a few edits on the fly there.  
10 We'll make those edits in the final version we will give to  
11 counsel and give to the jury. Are there any objections to my  
12 reading of the instructions? Did I leave out anything or make  
13 a misstatement?

14 MR. SHECHTMAN: Judge, Mr. Seabrook used the men's  
15 room. We will waive his appearance for this brief discussion.

16 THE COURT: That is fine.

17 MR. BELL: I think we are fine, Judge, yes.

18 THE COURT: Counsel for Mr. Seabrook?

19 MR. SHECHTMAN: We are fine, Judge. We liked your  
20 deeper voice.

21 THE COURT: Counsel for Mr. Huberfeld?

22 MR. MAZUREK: We are also fine with the instructions.

23 THE COURT: We'll make those edits before we send that  
24 in to the jurors. What we will do now is I will give counsel a  
25 little bit of a break, too. We will bring all the jurors out

HB8JSEA2

Charge

1 and have the marshal sworn, and then afterwards what we can do  
2 then, we'll ask the alternate jurors to go and get their  
3 belongings and come back out. Then we can send the other  
4 jurors in to start their deliberations. I will handle that  
5 process with the alternate jurors and won't dismiss them and  
6 let them go home. Any objection to that?

7 MR. BELL: No, your Honor.

8 MS. LYNAUGH: No, your Honor.

9 THE COURT: All good with the verdict form? Counsel  
10 have seen that and have the right version?

11 MR. BELL: Yes, your Honor, we are fine.

12 THE COURT: I will let counsel have a break. See you  
13 soon.

14 (Recess)

15 THE COURT: Please be seated.

16 So my law clerk is making those corrections to those  
17 typos. We'll give copies of the final draft of the jury  
18 instructions to counsel. Counsel should look at those and make  
19 sure that confirms to what I read. Once we have that vetted by  
20 counsel, we will mark that as Court Exhibit 1 and have that  
21 sent into the jury. The verdict form will be Court Exhibit 2.

22 Any objection to that?

23 MR. BELL: None, your Honor.

24 MS. LYNAUGH: No.

25 MR. MAZUREK: No.

HB8JSEA2

Charge

1 THE COURT: Anything I should say to the jury?

2 The other thing I should say to the jury, I'll bring  
3 all the jurors out and go ahead and let the alternate jurors go  
4 on about their life. I will remind the alternate jurors they  
5 still cannot read or listen to anything about this case or  
6 discuss this case with anyone at all, and I will let them know  
7 we'll be in touch with them if we need them and make sure they  
8 have removed all of their personal items from the jury room.

9 For the regular jurors, I plan to instruct them that  
10 they still cannot read anything about this case or listen to  
11 anything about this case or discuss this case with anyone  
12 except amongst themselves when they are all in the jury room.  
13 If a juror needs to step out to take a smoke break or anything  
14 else, they cease their deliberations and may not resume until  
15 all the jurors are there. Any objection to that?

16 MR. BELL: None your Honor.

17 THE COURT: All right. Let's bring them in. I think,  
18 counsel, I will ask my Wonderful and Talented Deputy to ask the  
19 alternate jurors to bring their belongings with them unless  
20 there is an objection to that?

21 MR. BELL: None.

22 THE COURT: Okay, let's do that.

23 (Jury present)

24 THE COURT: Please be seated.

25 I will ask my Wonderful and Talented Deputy to please

HB8JSEA2

Charge

1 swear the marshal in.

2 (The marshal was duly sworn)

3 THE CLERK: Thank you.

4 THE COURT: Now, first to the alternate jurors, I am  
5 going to instruct you as follows:

6 First of all, we are going to let you leave, but you  
7 are not excused from jury duty. You are still on jury duty, so  
8 my prior instructions to you remain in effect. Do not read  
9 anything about this case. If you see anything about this case  
10 in the newspapers or in the internet or anywhere else, stop  
11 reading. Don't listen to anything about this case. If you  
12 hear anything on the television, radio or internet, stop  
13 listening. Do not discuss this case with anyone and don't  
14 allow anyone to discuss this with you, meaning don't discuss it  
15 amongst yourselves, don't discuss it with deliberating jurors,  
16 don't discuss it with anyone and don't let anyone discuss this  
17 with you.

18 Also don't do any research regarding any of the people  
19 or the issues involved in this case. You are still on jury  
20 duty, but you may leave the courtroom and go on about your  
21 lives, with those instructions in mind. We might still need  
22 you. If so, we will be in touch with you. We will be in touch  
23 with you either way. If you are no longer needed, we will let  
24 you know that as well. Until you hear from us, those  
25 instructions remain in place.

HB8JSEA2

Charge

1 Have you retrieved all of your personal items from the  
2 jury room? You may leave. We have your contact information  
3 and we will let you know if we need you, okay.

4 (The alternate jurors left the courtroom)

5 THE COURT: For the regular jurors, you are now going  
6 to start your deliberations. However, certain instructions are  
7 still in effect. Do not read anything about this case. If you  
8 see anything about this case, the newspaper, on the internet,  
9 stop reading. Do not listen to anything about this case. If  
10 you hear anything about this case on the television, the  
11 internet, the radio, stop listening.

12 Do not do any research regarding any of the people or  
13 the issues in this case. Now, the change is in terms of  
14 discussing this case, you still may not discuss this case with  
15 anyone else outside of the jury room. You may only discuss  
16 this case in the jury room with your fellow jurors when all of  
17 you are present.

18 So if a juror needs to step out of the jury room to  
19 take a smoke break or something, you must cease your  
20 deliberations and you may not resume them until all of you are  
21 present. So if at any time a juror needs to step out, you must  
22 cease your deliberations. Other than that, you still may not  
23 discuss this case with anyone else, not even amongst  
24 yourselves.

25 So Juror No. X can't have a conversation with Juror

HB8JSEA2

Charge

1 No. Y outside of the jury room, and you can't even have that  
2 conversation within the jury room unless all of the jurors are  
3 present, all right?

4 And again don't read anything about this case. Don't  
5 research anything about the people or issues involved in this  
6 case. Don't let anyone else discuss this with you. Don't  
7 discuss this with anyone else, all right?

8 You may start your deliberations. We have ordered  
9 lunch for you. Your lunch should be there around 12:30 to  
10 12:45, okay? Stay here for just a moment and let me see  
11 counsel in the robing room briefly.

12 (At the sidebar)

13 THE COURT: I wanted to check before we send them in  
14 to deliberate. Did I leave anything out?

15 MR. MAZUREK: Were you going to ask them whether they  
16 intend to inform us whether they intend to go until 2:30 or  
17 5:00?

18 THE COURT: I hadn't planned on it. I can. We told  
19 them that before. Again I don't want to do anything that in  
20 any way may make them feel a certain kind of way. My sense is  
21 these jurors aren't particularly shy. If 2:30 comes around and  
22 they want to go, they'll let us know.

23 MR. BELL: Fine.

24 MR. SHECHTMAN: Fine.

25 MR. MAZUREK: That is fine.

HB8JSEA2

Charge

1 THE COURT: We'll leave it alone. If they don't have  
2 a verdict at 4:50 or so, my intention would be to bring them in  
3 at 4:55 and excuse them for the day. At that point it may make  
4 sense -- we'll cross that bridge when we get to it -- it may  
5 make sense to let them know we won't be sitting Friday. We'll  
6 wait until Thursday morning to tell them that.

7 If they end up not reaching a verdict today, at  
8 whatever time that is, my plan is that we dismiss the jury for  
9 the day, and I will tell the jury they don't have to come into  
10 court, they would just go in the jury room. Again I will  
11 remind them they can't start their deliberations until everyone  
12 is there.

13 MR. SHECHTMAN: Fine.

14 MR. MAZUREK: Fine.

15 MR. SHECHTMAN: It probably makes sense for us when  
16 they first go in, to make sure we have all the exhibits because  
17 we are likely to get a note that says send them all in. We  
18 have ours ready. You have yours?

19 MR. MAZUREK: Yes.

20 MR. SHECHTMAN: We'll check each other's.

21 THE COURT: While we are back here, we have the final  
22 versions of the jury instructions. Counsel, please look at  
23 those.

24 MR. SHECHTMAN: We are fine.

25 THE COURT: I want counsel to look at them before we

HB8JSEA2

Charge

1 send them in so there is no issue before we send that in. We  
2 can go ahead. I guess I will tell the jury that we'll give  
3 them the instructions later, and maybe it doesn't make sense to  
4 tell them anything, let them start deliberating and get them  
5 the verdict sheet and jury instructions.

6 MR. SHECHTMAN: We can tell them they'll have them in  
7 15 minutes.

8 MS. LYNAUGH: It is fine.

9 MR. BELL: We are comfortable now.

10 MR. SHECHTMAN: We are fine either way.

11 THE COURT: We'll just leave that.

12 (In open court)

13 THE COURT: You may begin your deliberations.

14 (The jury left the courtroom at exactly 10:56 am to  
15 begin deliberations)

16 THE COURT: Please be seated.

17 Again, counsel, go ahead and look through that final  
18 version of the jury instructions and make sure that comports  
19 with everything that was read, and I think you have checked the  
20 verdict sheet. Let me get one of the copies we gave counsel  
21 and let me make sure that is the right one. Let's have all  
22 counsel inspect that before that goes to the jury to make sure  
23 that is the right version, and we'll make that Court Exhibit 2.

24 MR. BELL: The verdict sheet looks good.

25 THE COURT: Show that same copy to counsel for the



HB8JSEA2

Charge

1 defense so that we're all on the same page.

2 (Pause)

3 MS. LYNAUGH: That is fine with us, your Honor.

4 THE COURT: We'll mark that as Court Exhibit 2.

5 Let me know when you have finished reviewing the jury  
6 instructions, and we'll mark that as Court Exhibit 1 and send  
7 that in as well.

8 (Pause)

9 THE COURT: Yes, counsel?

10 MR. SHECHTMAN: We are all okay, Judge.

11 THE COURT: Let's get one of these copies and make  
12 sure we have the right copy.

13 (Pause)

14 MR. SHECHTMAN: We are fine.

15 THE COURT: Now we're getting a little hyper-technical  
16 here, so what we have here, there is writing on the front and  
17 back of the documents to save a few trees. Do counsel care  
18 about that? Is that fine like that or do you want one side for  
19 the jury, or it doesn't matter?

20 MR. BELL: That is fine.

21 MS. LYNAUGH: It doesn't matter.

22 MR. MAZUREK: That is fine, your Honor.

23 THE COURT: We will make this Court Exhibit 1, and I  
24 will ask my Wonderful and Talented Deputy to give that to the  
25 marshal, and that will go to the jury. Counsel, you're free to

HB8JSEA2

Charge

1 hang out and do whatever you want to.

2 At 12:45 the jurors' lunch should get here, so let's  
3 have counsel take their lunch break between 12:45 and 1:45.  
4 There is no need to be in here for that. If the jurors have  
5 any notes or anything, they'll have to wait till we get back.

6 All right, thanks.

7 (Recess)

8 (Continued on next page)

HB8JSEA2

Charge

(Jury not present, time noted: 11:22 a.m.)

THE COURT: Counsel, you should have a copy of the exhibits, Court Exhibits 3 and 4.

Counsel, do you have copies of the notes?

MS. LYNAUGH: Yes.

THE COURT: Court Exhibit 3 reads: Dear Judge, may we please be given twelve copies of the instructions you read to us this morning? Sincerely, signed by the foreman. Received at 10:56 a.m.

Court Exhibit 4: Judge, is there a way for us to receive twelve copies of the instructions? This will help the efficiency of our discussions. Thank you, signed by the foreperson, 11:03.

Let me hear from counsel. I get my guess my inclination is to give them copies of the instructions and we label them -- I guess the question I have is they have asked for twelve copies. It would ordinarily make sense to give them eleven copies, but they asked for twelve copies so my inclination is to give them twelve copies of the instructions and we label them 1A through L, Court Exhibits 1A through L, but I'll hear what counsels' thoughts are.

MR. NAWADAY: That makes sense to us.

MR. MAZUREK: That's fine.

MS. LYNAUGH: That's fine.

THE COURT: Okay. Let me check my alphabet, I think

HB8JSEA2

Charge

1 that's right. A through L.

2 So we'll make copies of those notes. My inclination  
3 is for us, instead of bringing them out here, since they're  
4 trying to move efficiency, we'll write a note and show it to  
5 counsel that says something to the effect of: We received your  
6 notes. We're making twelve copies of the instructions and we  
7 will provide them to you.

8 Any objection to that by the government or the  
9 defense?

10 MR. NAWADAY: No, your Honor.

11 MS. LYNAUGH: None.

12 MR. MAZUREK: No.

13 THE COURT: Okay, we will do that.

14 Let me check with my clerk and my wonderful and  
15 talented deputy to see who has the best penmanship, because  
16 it's not me.

17 (Recess taken)

18 THE COURT: Counsel, so again, we did this before.  
19 There wasn't a court reporter here, so I want to put this on  
20 the record.

21 Again, we received Note Number 3 from the jury, Dear  
22 Judge, may we please be given twelve copies of the instructions  
23 you read to us this morning. Sincerely, signed by the foreman.

24 Note number 4, Judge, is there any way for us to  
25 received twelve copies of your instructions? This will help

HB8JSEA2

Charge

1 the efficiency of our discussions.

2 I explained to counsel before that my inclination was  
3 to give them twelve copies of the instructions, and counsel  
4 didn't have any objection to that. I want to put that on the  
5 record so we're clear.

6 Counsel for the government, is that correct?

7 MR. BELL: It is.

8 THE COURT: Counsel for the defense, is that correct?

9 MR. MAZUREK: Yes.

10 MS. LYNAUGH: Yes.

11 THE COURT: Counsel for defense waived their client's  
12 appearance, and we had that discussion before. Do counsel for  
13 the defense waive your client's appearance right now on the  
14 record.

15 MS. LYNAUGH: Yes.

16 MR. MAZUREK: We do.

17 THE COURT: And we also discussed what to say, and we  
18 discussed saying something to the effect we have received your  
19 note, we are making twelve copies of the instructions for you  
20 and we will provide them to you soon.

21 And counsel were in agreement with that, is that  
22 correct, counsel for the government and the defense?

23 MR. BELL: Yes, your Honor.

24 MS. LYNAUGH: Yes.

25 MR. MAZUREK: Yes.

HB8JSEA2

Charge

1 THE COURT: And my wonderful and talented deputy typed  
2 up a note to that effect. Have counsel all seen that note we  
3 will send into the jury?

4 MR. BELL: We have, and it's fine.

5 MR. MAZUREK: Yes.

6 MS. LYNAUGH: Yes.

7 THE COURT: So we will mark that note as Court  
8 Exhibit 5. We will send that in to the jury. My law clerk is  
9 currently making copies of the instructions, and when they are  
10 here we will mark those as 1A through L and send him in to the  
11 jury.

12 Counsel, anything else?

13 MR. BELL: No, your Honor.

14 THE COURT: All right.

15 (Recess taken)

16 THE COURT: We have copies of the jury instructions.  
17 We're stapling them. I want counsel to inspect those before we  
18 label them and send them into the jury. We have twelve copies  
19 of the jury instructions, so we'll have counsel review that  
20 before we send that in.

21 The other thing that I thought of, and I don't know if  
22 counsel want do anything about this, is typically if the jury  
23 requested to have a particular instruction reread to them or  
24 the like, I would give them some sort of general instruction  
25 that you should consider my instructions as a whole, and not

HB8JSEA2

Charge

1 single out any instruction. I don't know, obviously, what the  
2 jury is doing in there, I don't know if counsel want me to  
3 write something to that effect in there. It's in the general  
4 instructions, it's in like the second paragraph of the  
5 instructions. I wanted to raise that with counsel and see if  
6 counsel want me to do that. I'm willing to do that and write  
7 another note and say that, but I wanted to know what counsel's  
8 view is, starting with the government.

9 MR. BELL: I think we're all in agreement there isn't  
10 really a need.

11 MS. LYNAUGH: Agreed.

12 MR. MAZUREK: That's fine.

13 MR. BELL: And these were fine with us.

14 MS. LYNAUGH: That's fine.

15 THE COURT: Counsel for Huberfeld?

16 MR. MAZUREK: Yes, I'm good.

17 THE COURT: We'll label those 1A through L and send  
18 them in to the jury.

19 And again for the record, both Mr. Seabrook and  
20 Mr. Huberfeld are here.

21 Go ahead.

22 (Recess taken)

23 THE COURT: Counsel, we have a note. Counsel should  
24 all have copies of the note. Are counsel and the parties all  
25 here?

HB8JSEA2

Charge

1 MR. SCHECHTMAN: We are, your Honor.

2 THE COURT: The note reads as follows: Jury  
3 undecided, will return tomorrow, requesting email Platinum to  
4 COBA, phone calls, prosecution and defense closing statement,  
5 restaurant picture, Reynolds and Wien due diligence documents,  
6 COBA side letter. Sincerely, signed by the foreperson.

7 So it's my intention -- I read this as they want to go  
8 home now. It's my intention to bring them out, tell them that  
9 we received the note, excuse them for the day with the  
10 instructions that I have given them before about not reading to  
11 anything or listening to anything or doing any research or  
12 discussing this with anyone. And it seems to me for the phone  
13 calls, assuming they're talking about the audio recordings,  
14 that we ask the jurors to get here at 9:00, bring them out here  
15 when they're all assembled, and play phone calls for them. But  
16 I will hear from counsel. Seems to me they shouldn't be  
17 getting the closing statements.

18 MR. BELL: There's a handful of things. You're  
19 certainly right about not getting the closing statements, as  
20 those are not evidence. We do think that it makes sense,  
21 perhaps even before they leave today so that we can get them  
22 started out right tomorrow, that we actually ask them to go  
23 back and clarify a couple of things.

24 There are, as your Honor knows, several dozen emails  
25 in evidence. It's not clear what Platinum to COBA means,



HB8JSEA2

Charge

1 whether that would be the full subset of emails that includes  
2 one party from Platinum, one party from COBA. If so, that's a  
3 lot of emails, and that much isn't clear.

4 Phone calls, in addition to referring to the recorded  
5 conversations, which of course would take a while to play all  
6 of them, although if they want them, that's fine, may also very  
7 well refer to the summaries or the phone records underlying  
8 them in terms of patterns of calls. So I think it makes sense  
9 to clarify that well.

10 The restaurant picture is a bit of a surprise, but  
11 we're delighted to provide whatever restaurant pictures exist  
12 in the record.

13 The COBA side letter is somewhat clearer, but as to  
14 the other categories, it might make sense for us to have them  
15 clarify, spend five minutes doing that so we can get them what  
16 they need at jump tomorrow morning at 9:00.

17 THE COURT: Defense counsel?

18 MR. SCHECHTMAN: I think we're in agreement. And I  
19 would suggest that when it comes to emails between -- and I  
20 assume that means between Platinum and COBA, one would simply  
21 say to them: Do you want all emails that involve someone from  
22 Platinum and someone from COBA, or do you want a subset?

23 When it comes -- obviously the summations, they're not  
24 entitled to. The rest, the pictures, there are two pictures, I  
25 think, but if we send them both -- three, if we send them both,

HB8JSEA2

Charge

1 I don't think they will be disappointed. If you tell them  
2 there's three and we send them all, unless they want to narrow  
3 it, but there are three different pictures.

4 The Reynolds and Wien due diligence are two documents  
5 so that one is easy. The COBA side letter, there actually are  
6 two side letters. Again, the easiest thing is to send both  
7 unless they don't want both, but I agree with Mr. Bell  
8 clarification is necessary.

9 The only question I think is do we do it tonight,  
10 which would probably take five to ten minutes, or do we sort of  
11 let them go home and do it the morning. The advantage of doing  
12 it tonight is we could have everything for them first thing in  
13 the morning, particularly if the phone calls mean the wiretap  
14 calls. And there I think I would say, do you want -- it's  
15 three choices, do you want the phone charts, do you want the  
16 phone records that underlie it, do you want the wiretap calls,  
17 and in particular do you want all of them, and whatever they  
18 say we'll go with.

19 THE COURT: So what do you want me to ask them in  
20 terms of phone calls?

21 MR. SCHECHTMAN: I think I'd say that there's some  
22 ambiguity there, and are they -- do they want simply the phone  
23 summary charts, do they want the underlying phone records that  
24 those charts were based on, or do they want some or all of the  
25 wiretaps? And let them check the box, and then see where we're

HB8JSEA2

Charge

1 at.

2 THE COURT: The summary charts aren't really --

3 MR. BELL: They are in evidence, so I think it would  
4 make sense to make that available.

5 And we're content to actually have your Honor send all  
6 of this back by note so that they can get something to us and  
7 we'll know, and then I think send them home.

8 THE COURT: All right. Should we perhaps let them  
9 know also in that note that we're going to dismiss you soon,  
10 but before we dismiss you we would like to clarify, so they're  
11 not thinking that we ignored their first request and making  
12 them stay here?

13 MR. BELL: Yes, please.

14 THE COURT: So we will type up or write something  
15 quickly and send that to the jurors. I will meet with my clerk  
16 and write something and have my deputy type it up.

17 MR. SCHECHTMAN: Would it be helpful if we tried to  
18 write a note on consent?

19 THE COURT: That's even better. Why don't you do  
20 that.

21 (Pause)

22 THE COURT: And the other thing, I know every party  
23 has at least two lawyers here today, I guess so maybe the  
24 second lawyer for each party, I could address this to you, it  
25 does seem while counsel are doing that, it may make sense since

HB8JSEA2

Charge

1 we'll let the jury go soon, but I will hear what counsel's  
2 thoughts, to let the jury know that we want them to come back  
3 at 9:00 a.m. tomorrow. It may make sense today to let them  
4 know that court is going to be closed Friday, but I will hear  
5 from counsel. I don't want to do anything that is going to  
6 make them feel coerced to do anything, but I also don't want to  
7 kind of just ambush them if they decide at like 2:30 they want  
8 to go home tomorrow and say they have to come back here on  
9 Monday and they start freaking out.

10 Let me hear counsel's thoughts.

11 MR. BELL: I think telling them makes sense for the  
12 reasons that your Honor said, and as Friday looms, it may  
13 become a bigger distraction.

14 MR. MAZUREK: I agree that we should tell them today  
15 about Friday.

16 THE COURT: Counsel for Mr. Seabrook?

17 MS. LYNAUGH: Agreed.

18 THE COURT: So perhaps -- I guess what we'll do is  
19 we'll get this note together to send to them in terms of  
20 getting clarification for their request, then this other  
21 information, we'll bring them out right before we dismiss them  
22 and I will tell them about Friday.

23 MR. MAZUREK: Sounds good.

24 THE COURT: Okay.

25 MR. SCHECHTMAN: I think we're ready, Judge. I'll

HB8JSEA2

Charge

1 hand this up to the Court.

2 THE COURT: This seems fine. I will read this into  
3 the record. This is the note prepared by counsel, agreed to  
4 everyone, says: The Court's intention is to honor your request  
5 to go home. Before we do, however, could you clarify your note  
6 so that we can have it ready in the morning?

7 1. Do you want all emails between anyone at Platinum  
8 and anyone at COBA or some subset of those emails? If so, what  
9 subset?

10 2. Do you want (a) the summary phone call charts, (b)  
11 the actual phone records on which those charts were based, or  
12 (c) some or all of the wiretap conversations? If (c), which  
13 conversations?

14 3. There are three restaurant pictures. I will send  
15 them all to you unless you direct otherwise.

16 4. There are two side letters. I will send both to  
17 you unless you direct otherwise.

18 5. The summations are not evidence and therefore are  
19 not available to you.

20 Again, my preference would be to have clarification  
21 tonight, but I will send you home and wait for the morning if  
22 you prefer that course.

23 And that's agreeable to everyone?

24 MR. BELL: Yes.

25 MR. MAZUREK: Yes.

HB8JSEA2

Charge

1 THE COURT: I will ask my wonderful and talented  
2 deputy to mark this as Exhibit 7 and send it in to the jury.

3 MR. BELL: Like that?

4 THE COURT: Like that, or type it up. I think the  
5 handwriting is good. It's not Reena Raggi quality, but it's  
6 very good.

7 Before we send that in, could we make copies of that  
8 before we give it to the jury?

9 (Pause)

10 THE COURT: We'll send that in to the jury now.

11 (Pause)

12 THE COURT: We have a note. Counsel and the parties  
13 are all here.

14 I will read this note. Dear Judge, I will reply to  
15 your points below.

16 1. We request all emails to anyone at Platinum and  
17 anyone at COBA. We also request the letters from Reynolds and  
18 Wien from 2014 with due diligence about PPVA, specifically the  
19 letters with their enumerated concerns and the follow up where  
20 three quarter concerns are resolved.

21 2. We don't want summary phone charts and phone  
22 records, but we think having the binders from the government  
23 would be very helpful.

24 3. We will take all the restaurant pictures you have.

25 4. Yes, as requested above in number one.

HB8JSEA2

Charge

1           That's again talking about the emails. I think  
2 they're responding point by point to our request.

3           5. Understood about the summary arguments, but can we  
4 have a list of what the FBI found in Seabrook's home?

5           6. Can we get the transcript, one copy sufficient, of  
6 Jona Rechnitz's full testimony, including direct, cross, and  
7 any redirect examination.

8           That's the request. We'll make a copy of this. I  
9 think the jurors want to get out of here, so it may make sense  
10 to make copies of that.

11           Let me find how counsel want to proceed. It may make  
12 sense to say thank you for responding to our request, bring  
13 them out, tell them to go home, and then I will instruct them  
14 to not read about the case or listen to anything about the case  
15 or discuss this case with anyone until or unless they are all  
16 assembled this the jury room together. I will ask them to get  
17 here at 9:00 a.m. tomorrow and tell them that we will assemble  
18 that material for them.

19           I also tell them that, as with today, if they haven't  
20 reached a verdict tomorrow, they may stop their deliberations  
21 at 2:30. If they want to go beyond that, we'll be available  
22 until 5:00. The same applies for any other day that they  
23 deliberate, but the Court will be closed on Friday.

24           Any objection to that by anyone?

25           MR. BELL: All of that sounds fine to us, your Honor.

HB8JSEA2

Charge

1 We would recommend one specific addition, I don't think we're  
2 alone on this, that being that, especially since this is the  
3 first day of deliberations, the jurors should leave their  
4 materials here, their notes, certainly the exhibits, all of  
5 that other stuff.

6 THE COURT: Yeah, I would tell them not to leave their  
7 personal belongings in the jury room, but they should leave, as  
8 they always left, their notebooks in the jury room as well as  
9 the verdict form and the jury instruction.

10 Anything else from counsel?

11 MR. SCHECHTMAN: No, your Honor.

12 MR. MAZUREK: No, your Honor.

13 THE COURT: Okay, let's bring the jury out.

14 (Jury present)

15 THE COURT: So we received your response to our  
16 request, thank you for that. We will assemble that information  
17 for you of and provide that to you tomorrow.

18 We're going to dismiss you for the day. Let me give  
19 you the instructions that I have given you before, a little bit  
20 extra. Do not read anything about this case. If you see  
21 anything in the papers or on the internet about this case, stop  
22 reading. Do not listen to anything about this case. If you  
23 hear anything about this case on the television or internet,  
24 radio, stop listening. Do not conduct any research regarding  
25 any people or issues in this case. Do not discuss this case



HB8JSEA2

Charge

1 with anyone or allow anyone to discuss this with you until and  
2 unless you are all assembled in the jury room together. I will  
3 ask you to get here at 9:00 a.m. tomorrow.

4 In terms of scheduling, as with today, if you haven't  
5 reached a verdict, you may cease your deliberations at 2:30.  
6 If you want to go beyond that, we are available to you until  
7 5 o'clock. And that applies to any day that you may  
8 deliberate. In terms of scheduling, the Court will be closed  
9 on Friday, so we will not be sitting on this Friday.

10 At 9:00 a.m. you will not be coming out here, you will  
11 go to the jury room. And again, you may begin and resume --  
12 you should resume your deliberations when everyone is  
13 assembled, but you must not start your deliberations or resume  
14 your deliberations until all of you are assembled in the jury  
15 room. Don't leave any personal items in the jury room. You  
16 should leave your notebooks in there as well as the verdict  
17 form and the jury instructions. That will be locked up and  
18 safeguarded.

19 Hold on for a moment let me speak to counsel at  
20 sidebar briefly. Hold on just a second.

21 (In robing room)

22 THE COURT: I wanted to check, did I leave anything  
23 out? Any objection to anything? Anything else anyone wants?

24 MR. MAZUREK: No.

25 THE COURT: Okay, I'll let them go. Thanks.

HB8JSEA2

Charge

1 (In open court)

2 THE COURT: Okay. We'll see you tomorrow. Have a  
3 good evening.

4 (Jury not present)

5 THE COURT: Again, let's give the jurors a five-minute  
6 head start.

7 Is there anything else that we need to discuss?

8 Counsel, we will make copies of this note and give it  
9 to counsel. If counsel want to look at it now, you may. Maybe  
10 you can discern something from the handwriting.

11 MR. BELL: Your Honor, we may be able to settle on  
12 what it is we have to do night.

13 THE COURT: I'll be here. That's fine. I'll give  
14 counsel a chance to do that.

15 (Adjourned to November 9, 2017 at 9:00 a.m.)  
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